



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	02/03/99	Bill No:	SB 299
Tax:	Administration	Author:	Poochigian
Board Position:	Support	Related Bills:	AB 2250 (1998)

BILL SUMMARY:

This bill would provide that: 1) every taxpayer entitled to reimbursement for reasonable fees and expenses who files a claim therefor, shall also be granted an oral hearing before the Board, as specified, 2) the amount of reimbursed fees and expenses includes fees and expenses incurred at the hearing on the reimbursement claim, and 3) “reasonable fees and expenses related to a hearing before the board” includes all fees and expenses incurred after the date a petition for redetermination or claim for refund is filed.

ANALYSIS:

Current Law:

Under current Sales and Use Tax Law (and the other various tax and fee laws administered by the Board of Equalization), BOE auditors may attempt to verify certain information reported on taxpayer tax returns. Where an audit discloses that the taxpayer has underpaid tax (or if the BOE otherwise determines that the taxpayer owes additional amounts), the taxpayer will be sent a billing called a *notice of determination*.

A taxpayer who disagrees with the BOE’s determination of amounts owed may file an appeal, called a *petition for redetermination*. During the audit and petition process, the auditor and appropriate BOE staff will review all the taxpayer’s contentions, including any substantiating evidence submitted in the form of books and records or other documentation. If BOE staff confirm the legitimacy of the assessment, a *notice of redetermination* will be issued, unless the taxpayer requests either a Board hearing or appeals conference, which provides the taxpayer another opportunity to present material in support of their position. At the appeals conference or hearing, taxpayers may present facts and material in support of their position. After that hearing, the Appeals Section representative will prepare a *decision and recommendation* (D&R), containing an analysis, conclusion, and recommendation for the case. If the taxpayer disagrees with the D&R, the taxpayer may request a hearing before the Board Members (Board).

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board’s formal position.

The BOE role in appeals of Franchise Tax Board (FTB) cases is different than for the other BOE-administered taxes and fees. The taxpayer's forum for appealing an FTB action is a hearing before the Members of the Board.

The Sales and Use Tax Law Taxpayers' Bill of Rights

Assembly Bill 2833 (Chapter 1574, Statutes of 1988) added Article 3, The California Taxpayers' Bill of Rights, to the Sales and Use Tax Law to provide that every taxpayer is entitled to be reimbursed for any reasonable fees and expenses "related to a hearing before the board" if all of the following conditions are met: (1) the taxpayer files a claim for the fees and expenses with the Board, (2) the Board, in its sole discretion, finds that the action taken by BOE staff was unreasonable, and (3) the Board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing. Similar provisions were later added to other Board-administered tax and fee programs.

Current law provides that in order for the Board to determine whether BOE staff has been unreasonable, the Board shall consider whether BOE staff has established that its position was substantially justified. Furthermore, if the Board finds that BOE staff was unreasonable with respect to certain issues, but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where BOE staff was unreasonable.

According to Section 7091(c) (1) of Sales and Use Tax Law, the amount of reimbursed fees and expenses is limited to fees and expenses incurred after the date that a petition for redetermination or claim for refund is filed. Regulations addressing these issues (Regulations 5090-5095) clarify that expenses incurred after the taxpayer files a petition for redetermination but before BOE staff issues a favorable D&R are not "related to a hearing before the board," since a hearing is not required to resolve the dispute. Therefore, claims for reimbursement of fees and expenses where taxpayers received a favorable D&R may be denied.

The Franchise Tax Board Taxpayers' Bill of Rights

The Taxpayers' Bill of Rights provisions administered by the Franchise Tax Board (FTB) provide that a taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to an appeal before the Board if both of the following conditions are met: (1) the taxpayer files a claim for the fees and expenses with the Board, and (2) the Board, in its sole discretion, finds that the action taken by the FTB staff was unreasonable.

Current law provides that "fees and expenses related to an appeal before the Board" do not include fees and expenses incurred in cases where an appeal has been filed but resolved before the FTB's written statement of its position has been submitted to the Board. Current law also provides that the Board, in determining whether the FTB staff has been unreasonable, shall consider whether the FTB has established that its

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position in the appeal was substantially justified. It is presumed that the FTB staff was not substantially justified if it did not follow its applicable published guidance (e.g., regulations, legal rulings, notices, information releases, announcements, chief counsel rulings, or determination letters issued to a taxpayer) in the appeal.

The amount of reimbursed fees and expenses is limited to fees and expenses incurred after the date an appeal of a notice of action with respect to a deficiency assessment or jeopardy assessment, or a denial of claim for refund has been filed.

Proposed Law:

This bill would amend the Taxpayers' Bill of Rights provisions in both the BOE-administered Sales and Use Tax Law and the FTB-administered Franchise and Income Tax Law. Both of these Taxpayers' Bill of Rights provisions would be amended to provide that every taxpayer who files a reimbursement claim for fees and expenses related to a hearing before the Board of Equalization shall be granted an oral hearing before the Board, unless that taxpayer waives his right to an oral hearing in writing, or unless the Board concedes the underlying tax appeal and agrees to reimburse fees and expenses. The Board would be required to give the taxpayer 60 days' notice of the time and place of the hearing. Under both laws, the bill specifically provides that the fees and expenses that may be reimbursed include fees and expenses incurred at the hearing on the claim for reimbursement. With respect to the Sales and Use Tax provisions only, the bill would also clarify that "reasonable fees and expenses related to a hearing before the board" include all fees and expenses incurred after the date a petition for redetermination or claim for refund is filed.

Similar Bills

This bill is similar to AB 2250 (Poochigian) from the previous session. The Board was Neutral on that bill, which failed to pass the Assembly Appropriations Committee.

COMMENTS:

1. Sponsor and Purpose of the Bill: This bill is sponsored by Board Member Dean Andal. According to Mr. Andal's office, provisions of the Taxpayers' Bill of Rights are ambiguous with respect to whether taxpayers are entitled to an appearance before the Board after filing a fee reimbursement claim. Mr. Andal believes that every taxpayer who wins a case based on the merits should be entitled to appear at a hearing before the Board if the taxpayer files a fee reimbursement claim.
2. The Board recently authorized publication of proposed amendments to Regulation 5094, which would be consistent with provisions of this bill. This proposed amendment would require the Board to schedule an oral hearing after the taxpayer has presented the summary of the claim and written submissions to the Board, and would also provide that the oral hearing may be waived by the taxpayer and the matter submitted for decision on the basis of the written submission.

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3. This bill could increase the number of Board hearings and/or taxpayers eligible for reimbursement of fees and expenses. Under current law, as clarified by Regulations 5090-5095, taxpayers are eligible for reimbursement of expenses and fees only where the claimant seeks review of an unfavorable D&R issued by the BOE's Appeals Section. This bill, by defining "reasonable fees and expenses related to a hearing before the board," would allow taxpayers to be reimbursed for fees and expenses even where the appeals section decision was favorable to the taxpayer. By allowing reimbursement in cases where the taxpayer received a favorable staff determination, this bill would make the reimbursement option available to a greater pool of taxpayers, resulting in an increased amount of fees and expenses potentially subject to reimbursement.
4. Some technical amendments should be considered.
 - The changes proposed by this bill affect only the BOE Sales and Use Tax and FTB Taxpayers' Bill of Rights. Similar provisions should be added to the other tax and fee programs administered by the BOE.
 - The phrase "all fees and expenses incurred after the date a petition for determination or claim for refund is filed" should include a description and be narrowly defined.
 - The operative dates for the BOE and FTB provisions are different.

COST ESTIMATE:

This bill may result in administrative costs related to an additional level of Board special claims hearings that cover only the question of the entitlement to reimbursement for reasonable fees and expenses related to either a hearing before board staff or an appeal before the Board. Because no specific source of funding is proposed for this purpose, it is presumed that the unknown hearing-related fees and expenses would have to be paid from the Board's annual operating budget appropriation. This could result in the redirection of existing funds and/or deficiency requests.

REVENUE ESTIMATE:

This bill would not directly impact state or local revenues.

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